

1-1 By: Whitmire, Hinojosa S.B. No. 1263
1-2 (In the Senate - Filed March 9, 2005; March 21, 2005, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 April 11, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 11, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1263 By: Ogden

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the creation of a commission to ensure the quality of
1-11 forensic science.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 38, Code of Criminal Procedure, is
1-14 amended by adding Article 38.01 to read as follows:

1-15 Art. 38.01. TEXAS FORENSIC SCIENCE COMMISSION

1-16 Sec. 1. CREATION. The Texas Forensic Science Commission is
1-17 created.

1-18 Sec. 2. DEFINITION. In this article, "forensic analysis"
1-19 has the meaning assigned by Article 38.35(a).

1-20 Sec. 3. COMPOSITION. (a) The commission is composed of
1-21 the following 11 members:

1-22 (1) three members appointed by the governor, at least
1-23 one of whom must be a dean of a law school or the dean's designee and
1-24 at least one of whom must be a law enforcement officer in this
1-25 state;

1-26 (2) two members appointed by the attorney general, at
1-27 least one of whom must have expertise in the field of forensic
1-28 science;

1-29 (3) one member appointed by the chancellor of The
1-30 Texas A&M University System and one member appointed by the
1-31 chancellor of The University of Texas System, both of whom must be
1-32 faculty members of a medical school and specialize in clinical
1-33 laboratory medicine;

1-34 (4) two members appointed by the chancellor of the
1-35 Texas State University System, both of whom must be faculty or staff
1-36 members of the Sam Houston State University College of Criminal
1-37 Justice;

1-38 (5) one member appointed by the executive director of
1-39 the Texas District and County Attorneys Association; and

1-40 (6) one member appointed by the executive director of
1-41 the Texas Criminal Defense Attorneys Association.

1-42 (b) Each member of the commission serves a two-year term.
1-43 The term of the members appointed under Subsections (a)(1) and (4)
1-44 expires on September 1 of each odd-numbered year. The term of the
1-45 members appointed under Subsections (a)(2), (3), (5), and (6)
1-46 expires on September 1 of each even-numbered year.

1-47 (c) The governor shall designate a member of the commission
1-48 to serve as the presiding officer.

1-49 Sec. 4. DUTIES. (a) The commission shall:

1-50 (1) develop and implement:

1-51 (A) an accreditation process for all
1-52 laboratories, facilities, or entities that conduct forensic
1-53 analyses; and

1-54 (B) a reporting system through which accredited
1-55 laboratories, facilities, or entities report professional
1-56 negligence or misconduct;

1-57 (2) require all laboratories, facilities, or entities
1-58 that conduct forensic analyses to:

1-59 (A) become accredited by the commission; and

1-60 (B) report professional negligence or misconduct
1-61 to the commission; and

1-62 (3) investigate, in a timely manner, any allegation of
1-63 professional negligence or misconduct that would substantially

2-1 affect the integrity of the results of a forensic analysis
 2-2 conducted by an accredited laboratory, facility, or entity.

2-3 (b) An investigation under Subsection (a)(3):

2-4 (1) must include the preparation of a written report
 2-5 that identifies and also describes the methods and procedures used
 2-6 to identify:

2-7 (A) the alleged negligence or misconduct;

2-8 (B) whether negligence or misconduct occurred;

2-9 and

2-10 (C) any corrective action required of the
 2-11 laboratory, facility, or entity; and

2-12 (2) may include one or more:

2-13 (A) retrospective reexaminations of other
 2-14 forensic analyses conducted by the laboratory, facility, or entity
 2-15 that may involve the same kind of negligence or misconduct; and

2-16 (B) follow-up evaluations of the laboratory,
 2-17 facility, or entity to review:

2-18 (i) the implementation of any corrective
 2-19 action required under Subdivision (1)(C); or

2-20 (ii) the conclusion of any retrospective
 2-21 reexamination under Paragraph (A).

2-22 (c) The commission by contract may delegate the duties
 2-23 described by Subsections (a)(1) and (3) to any person the
 2-24 commission determines to be qualified to assume those duties.

2-25 (d) As part of the accreditation process developed and
 2-26 implemented under Subsection (a)(1), the commission may:

2-27 (1) establish:

2-28 (A) minimum accreditation standards; and

2-29 (B) mandatory training requirements for
 2-30 individuals employed by a laboratory, facility, or entity that
 2-31 conducts forensic analyses;

2-32 (2) validate or approve specific forensic methods or
 2-33 methodologies; and

2-34 (3) establish procedures, policies, and practices to
 2-35 improve the quality of forensic analyses conducted in this state.

2-36 (e) The commission may require that a laboratory, facility,
 2-37 or entity required to be accredited under this section pay any costs
 2-38 incurred to ensure compliance with Subsection (b)(1).

2-39 (f) The commission shall make all accreditation reviews
 2-40 conducted under Subsection (a)(2) and investigation reports
 2-41 completed under Subsection (b)(1) available to the public. A
 2-42 report completed under Subsection (b)(1), in a subsequent civil or
 2-43 criminal proceeding, is not prima facie evidence of the information
 2-44 or findings contained in the report.

2-45 Sec. 5. REIMBURSEMENT. A member of the commission may not
 2-46 receive compensation but is entitled to reimbursement for the
 2-47 member's travel expenses as provided by Chapter 660, Government
 2-48 Code, and the General Appropriations Act.

2-49 Sec. 6. ASSISTANCE. The Texas Legislative Council, the
 2-50 Legislative Budget Board, and The University of Texas at Austin
 2-51 shall assist the commission in performing the commission's duties.

2-52 Sec. 7. SUBMISSION. The commission shall submit any report
 2-53 received under Section 4(a)(2) and any report prepared under
 2-54 Section 4(b)(1) to the governor, lieutenant governor, and the
 2-55 speaker of the house of representatives not later than December 1 of
 2-56 each even-numbered year.

2-57 SECTION 2. Subsections (a), (d), and (e), Article 38.35,
 2-58 Code of Criminal Procedure, are amended to read as follows:

2-59 (a) In this article:

2-60 (1) "Forensic analysis" means a medical, chemical,
 2-61 toxicologic, ballistic, or other expert examination or test
 2-62 performed on physical evidence, including DNA evidence, for the
 2-63 purpose of determining the connection of the evidence to a criminal
 2-64 action. The term does not include:

2-65 (A) latent print examination; or

2-66 (B) a test of a specimen of breath under Chapter
 2-67 724, Transportation Code[~~, or~~

2-68 [~~(C) an examination or test excluded by rule~~
 2-69 ~~under Section 411.0205(c), Government Code].~~

3-1 (2) "Physical evidence" means any tangible object,
3-2 thing, or substance relating to a criminal offense.

3-3 (d) Physical evidence subjected to a forensic analysis, and
3-4 testimony regarding the evidence, under this article is not
3-5 admissible in a criminal case if, at the time of the analysis or the
3-6 time the evidence is submitted to the court, the crime laboratory or
3-7 other entity conducting the analysis was not accredited by the
3-8 Texas Forensic Science Commission [~~Department of Public Safety~~]
3-9 under Article 38.01 [~~Section 411.0205, Government Code~~].

3-10 (e) Notwithstanding Subsection (d), physical evidence
3-11 subjected to a forensic analysis under this article is not
3-12 inadmissible in a criminal case based solely on the accreditation
3-13 status of the crime laboratory or other entity conducting the
3-14 analysis if the laboratory or entity:

3-15 (1) has preserved one or more separate samples of the
3-16 physical evidence for use by the defense attorney or use under order
3-17 of the convicting court; and

3-18 (2) has agreed to preserve those samples until all
3-19 appeals in the case are final. This subsection expires September 1,
3-20 2007 [~~2005~~].

3-21 SECTION 3. Sections 411.0205 and 411.0206, Government Code,
3-22 are repealed.

3-23 SECTION 4. Article 38.35, Code of Criminal Procedure, as
3-24 amended by this Act, applies only to the admissibility of physical
3-25 evidence in a criminal proceeding that commences on or after the
3-26 effective date of this Act. The admissibility of physical evidence
3-27 in a criminal proceeding that commenced before the effective date
3-28 of this Act is governed by the law in effect at the time the
3-29 proceeding commenced, and that law is continued in effect for that
3-30 purpose.

3-31 SECTION 5. (a) Initial appointments to the Texas Forensic
3-32 Science Commission must be made not later than the 60th day after
3-33 the effective date of this Act.

3-34 (b) Of the initial members of the Texas Forensic Science
3-35 Commission:

3-36 (1) the members appointed under Subdivision (1) or
3-37 (4), Subsection (a), Section 3, Article 38.01, Code of Criminal
3-38 Procedure, as added by this Act, serve terms expiring September 1,
3-39 2007; and

3-40 (2) the other members serve terms expiring September
3-41 1, 2006.

3-42 (c) A member whose term expires on September 1, 2006, is
3-43 eligible to be reappointed for a two-year term as provided by
3-44 Subsection (b), Section 3, Article 38.01, Code of Criminal
3-45 Procedure, as added by this Act.

3-46 SECTION 6. This Act takes effect September 1, 2005.

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